

No. 11,779

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

APPELLANT'S OPENING BRIEF.

J. R. MASON,

1920 Lake Street, San Francisco, California,

Appellant, Pro se.

FILED

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PARADISE IRRIGATION DISTRICT,

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APPELLANT'S OPENING BRIEF.

JURISDICTIONAL FACTS AND PLEADINGS.

This proceeding is under Chapter IX, 11 USCA §§ 401-403, 50 Stat. 653, as amended June 30, 1946.

Appellant owns and holds \$29,000 par value of Paradise Irrigation District original, unrefunded, valid, binding and unpaid 6% general obligation bonds, dated May 1, 1917 and July 1, 1920, with fixed serial maturities, with a present value of not less than \$50,000 (including statutory interest in default since 1936).

By the terms of the final decree appellant is given the choice of accepting \$15,231.09 for his claim providing he withdraws the funds in *custodia legis* within one year, or be forever enjoined from making any

claim whatsoever "against the petitioning district or its officers." (R. 31-32.)

This \$15,231.09 is less than the defaulted interest alone on the claim of appellant, leaving no compensation whatever for principal of the \$29,000 bonds.

Otherwise, the final decree provides that holders of original bonds "be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever as against the petitioning district or its officers, or against the property situated therein or the owners thereof." (R. 31, 32.) Appellant filed his proof of claim, but did not and does not "submit himself to the jurisdiction of this Court except for the special purpose of objecting to the jurisdiction of this court." (R. 161-163; Case No. 9925.)¹

The claim of appellant, according to controlling decisions by the Supreme Courts of the United States and of California, is governed exclusively by State law, and is subject to no "interference" by virtue of any federal statute, including 11 USCA §§ 401-403. The State law creating and controlling the contractual obligation in appellant's bonds, is Stats. 1897, p. 254 as amended, Deering's General Laws, Act 3854, p. 1792. Codified in Stats. 1943, Ch. 368, Div. 10, 11 as the Water Code of California.

Final decree was entered Sept. 24, 1947. (R. 26.) Notice of appeal was filed Oct. 21, 1947. (R. 32.)

¹References are to the Record in Case No. 11,779 unless otherwise indicated. The Record in Case No. 9925 is a part of the Record on Appeal herein.

The jurisdiction of this Court is invoked under Sections 24 and 25 of the Bankruptcy Act of 1898 as amended June 22, 1938. (11 USCA Secs. 47-48.)

PROPRIETY OF THIS APPEAL.

Appellee insists that the *J. R. Mason v. Paradise I. D.*, 326 U.S. 536 opinion "ended the matter". (R. 23.) That case involved only one minor question, and nothing ordered or decreed in the interlocutory decree had the force or effect of impairing or destroying the claim of appellant, so it would have been premature to present the basic constitutional points raised herein, as an actual controversy before the final decree.

STATEMENT OF THE CASE.

Paradise Irrigation District is a trust of land, a public agency of California, situate in Butte County, and created in 1916, according to the provisions of Stats. 1897, p. 254, as amended, Deering's General Laws, Act 3854, p. 1792. Appellant's "bonds and the interest thereon shall be paid from an annual assessment upon the land within the district; and all the land within the district shall be and remain liable to be assessed for such payments as hereinafter provided." (Stats. 1917, p. 764.) "The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, and shall be held by such

district, in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property, as herein provided * * *". (Stats. 1909, p. 1075.) The law also imposed on county officials continuing duties to levy the assessments, and also on the Attorney General. (Stats. 1917, pp. 765/768.) The power of the State to establish such a trust of land and agency of the State is not questioned.

The first bond issue was voted and sold in 1917. A smaller issue was voted and sold in 1920. Of these two bond issues, the only bonds still outstanding are the twenty-nine bonds owned by appellant. (R. 154, Case No. 9925.)

Prior to the instant petition, appellee submitted the same plan of composition to get a discharge from the same claims owned by appellant. Discharge was disallowed under the provisions of Ch. IX of the Bankruptcy Act. (11 USCA 301-304.) Judgment of dismissal, which long ago became final, is shown. (R. 86/89, No. 9925.)

The subsequent payment to appellant of \$3,035.95 as interest on his claim (R. 157, No. 9925) was made out of Court, and is proof that appellee recognized the finality of the judgment of dismissal. (R. 89, No. 9925.) Since that payment in 1937, appellee has refused to pay appellant any of the interest or principal which has fallen due, but it has paid all interest and principal due the R.F.C. on account of the refunding

4% bond issue, in absolute violation of the applicable and controlling order of payment provisions in Sec. 52 (Stats. 1919, p. 667) as construed and applied in *Selby v. Oakdale I. D.*, 140 C. A. 171.

There is no complaint by the R.F.C., or by anyone that the holding of the original bonds does or could infringe their rights.

The objections presented to the final decree (R. 5/21) were not answered (R. 23) nor was any opinion issued before the District Court entered the final decree. (R. 26.)

SPECIFICATIONS OF ERROR.

Appellant relies upon the following specifications of error within the scope of the assignment of errors submitted in the Statement of Points on Appeal. (R. 33 and 40.)

1. The final decree, as applied, is *ultra vires* the Congress.

2. The decree, as applied, conflicts with California laws which control the duties and obligations of the debtor.

3. The decree, as applied, contravenes the land laws of California controlling the rents, issues and profits of land within its domain.

4. The decree, as applied, impairs vested property rights of bondholders in violation of the 5th Amendment of U. S. Constitution.

5. The decree, as applied to the still outstanding original bonds, impairs a contract and trust

obligation executed by the State of California, and secured by Art. I, Sec. 10, Cl. 1 of U. S. Constitution, and by Art. I, Sec. 16 and Art. VI, Sec. 13 of California Constitution.

6. The decree limiting acceptance of the funds in *custodia legis* to 12 months is an error of law.

7. The injunctive provisions in the final decree, as applied, are an error of law, and a gift of public funds prohibited by Art. IV, Sec. 31 of the California Constitution.

8. The decree, which provides full payment of the investment made by the R.F.C. in the form of long term (4%) interest bearing bonds, but denies equal treatment to the lawful holder of valid, binding and unpaid original 6% gold bond obligations, ordering him to get a compromise cash figure without interest, is discriminatory, and unfair and is an error of law.

ARGUMENT.

**FIRST PROPOSITION: THE FINAL DECREE, AS APPLIED,
IS ULTRA VIRES THE CONGRESS.**

The immunity of the bonds and other fiscal affairs of Paradise Irrigation District from federal control or interference, is based on the fact that appellant's bonds constitute a valid, binding and unpaid contract with the State of California, or its public agency, protected from federal impairment by the Federal Constitution.

The Supreme Court of the United States has not abandoned this basic principle of constitutional im-

munity, announced in *Ohio Life Ins. Co. v. Debolt*, 16 How. 415, as follows:

“* * * whether such contracts should be made or not, is exclusively for the consideration of the State. It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States, and over which this Court has no control.”

Nothing in Ch. IX (11 USCA 401-403) of the Bankruptcy Act allows a Federal Court to veto or interfere in any manner with non-discriminatory land tax laws of a State. To allow Federal Courts to interfere with the levy and collection of direct *ad-valorem* land taxes or assessments required by State law and decisions would contravene a very long line of cases, including *Heinie v. Levee Comm.*, 19 Wall. 655; *Ontario Land Co. v. Yordy*, 212 U.S. 152; *Arkansas Corp. v. Thompson*, 312 U.S. 673, 313 U.S. 132; *Great Lakes Dredge and Dock Co. v. Huffman*, 319 U.S. 293; *Meredith v. City of Winterhaven*, 320 U.S. 228; *Huddleson v. Dwyer*, 322 U.S. 232; *Gardner v. State of N. J.*, 329 U.S. 565.

No such question was before the Supreme Court in the *U. S. v. Bekins* case, as an actual controversy, and that Court was very careful to warn that Chap. IX does not authorize a Court of Congress to “contravene provisions of the Federal Constitution”, as follows (304 U.S. 27, 52):

“The reservation to the States by the 10th amendment protected and did not destroy their right to make contracts and give consents *where that ac-*

tion would not contravene the provisions of the Federal Constitution." (Italics supplied.)

In *Faitoute I. & S. Co. v. City of Asbury Park*, 316 U.S. 502, 508, the Court said in regard to the force and effect of Ch. IX:

"It would offend the most settled habits in the relationship between the states and the nation to imply such a retroactive nullification of state authority over its subordinate organs of government."

In *Mission School Dist. v. Texas*, 116 F. (2d) 175 (C.C.A. 5), the Court very carefully pointed out that Congress, in enacting the amended Chap. IX (11 USCA 401-403) inserted "an express requirement that nothing shall be agreed on which the State law does not enable it to do." See also *Spellings v. Dewey*, 122 F. (2d) 652; see also, *Green v. City of Stuart*, 135 F. (2d) 33, cert. denied and rehearing denied (12 U.S. L.W. 3161, Nov. 9, 1943) as follows:

"Chap. IX is a special exercise of the bankruptcy jurisdiction, *is dependent on State consent and is limited to that consent.*" (Italics supplied.)

Paradise Irrigation District is a trust of land within the sovereign domain of California. It has no authority or standing to urge on behalf of taxpayers that taxes be curbed, nor with consent of some creditors that appellant's claim be dishonored. (Stats. 1917, p. 758.) The applicable State law allows neither *Selby v. Oakdale I. D.*, 140 C. A. 171; *Shouse v. Quinley*, 3 Cal. (2d) 357; *City of Long Beach v.*

Morse, 31 A.C. 283, 287, 295 (Dec. 30, 1947). "Nor are the grounds for the decision in *Provident Land Corp. v. Zumwalt* (1938), 12 Cal. (2d) 365 present here. Both the nature of the trust upon which the lands there concerned were granted for irrigation purposes and *the rights of the bondholder 'beneficiaries'* differ from those involved in this action." (Italics added.)

Although the bonds owned by appellant were issued in 1917 and 1920, it was not until 1939 (Stats. 1939, Ch. 72) that any California statute attempting to allow agencies of the State to submit to any Federal statute, including 11 USCA 401-403 existed.

In *Boone v. Kingsbury* (1928), 206 Cal. 148, at p. 189, the Court warned:

"The state cannot abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties * * *".

In 43 *Corp. Jur.* p. 211, it is stated:

"As the state may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipal corporation, as a governmental agency, can not surrender or contract away its governmental functions and powers, *nor such functions as are regarded as mandatory*, and any attempt to barter or surrender them is invalid." (Italics added.)

The Supreme Court has again reaffirmed that Federal powers can not be enlarged, when a state con-

sents. *U. S. v. Carmack*, 67 S. Ct. 252, at 255, quoting with approval from *Kohl v. U. S.*, 91 U.S. 374, as follows:

“If the U. S. have the power it must be complete in itself. It can neither be enlarged or diminished by a State. * * * The consent of a State can never be a condition precedent to its enjoyment.”

The above cited cases from other Circuits point out that the authority allowed by Congress to its Courts in Chap. IX proceedings is “dependent on State consent, and is limited to that consent”. In the *Bekins* case the Court was careful to point out that a State could not give an effective consent, unless “that action would not contravene the provisions of the Federal Constitution.”

Therefore, because the claim of appellant is a vested statutory right secured both by the Federal and California Constitutions, it is as immune from “interference” by Acts of the Congress, as other encumbrances or statutory liens on restricted land within the domain of California. Under controlling law and decisions it is immune from Federal veto or interference, because any attempt by the Congress to exercise its power in this field in conflict with State law, is *ultra vires*.

SECOND PROPOSITION: THE DECREE, AS APPLIED, CONFLICTS WITH CALIFORNIA LAWS WHICH CONTROL THE DUTIES AND OBLIGATIONS OF THE DEBTOR.

The land in each California Irrigation District “shall be held by such district, in trust for, and is

hereby dedicated and set apart to the uses and purposes set forth in this act.” (Stats. 1909, p. 1075.)

The right of appellant as a holder of contractual obligations to repayment from ground rent was clearly and unequivocally settled in the *Provident v. Zumwalt*, 12 Cal. (2d) 365 (1938) case:

“Once it is made clear that the lands are held in trust, it necessarily follows that their proceeds, whether by sale or lease, are likewise subject to the trust. It would be manifestly absurd to say that although the property is held in trust, none of the benefits of the trust property accrue to the beneficiaries, and that none of the rents or profits of the trust property need be used in furtherance of the trust purposes. On this point, namely, that the land is trust property, held for the ‘uses and purposes’ of the act, and that the proceeds are stamped with the character of the property from which they flow, the statute read in the light of elementary principles, leaves no room for debate.”

This ruling was cited December 30, 1947 in the case of *City of Long Beach v. Morse*, 31 Adv. Cal. 283, at 287, when the California Supreme Court disallowed attempts by another State agency to misapply proceeds of such a trust of land.

In *Ohio Oil Co. v. Thompson*, 120 F. (2d) 831, it was adjudged that when a State Court has ruled on the rights of a trustee, the Bankruptcy Court is bound by the State Court decree.

The bonds owned by appellant constitute irrevocable contractual obligations payable at fixed maturity dates, or thereafter from assessments, water tolls, and

the proceeds of land sales or the rents, issues and profits of all land within the District as a beneficent landlord, until the contract is fully repaid, with interest as provided by the applicable law. The contract is created by statute, the bonds and coupons being merely evidences of the contract. Stats. 1939, Chap. 72 did not supersede any of the statutes applicable to the contract owned by this appellant. Appellee has shown no statute permitting Paradise Irrigation District to break its contract and trust obligation to appellant, and has made no reply to the objections made to the proposed final decree. (R. 5/25.)

In *Mason v. Paradise I. D.*, 326 U.S. 536, the only question before the Court was the point of equality between creditors. Nothing in the interlocutory decree could form the base for raising constitutional questions, as an actual controversy. Appellee argues that this opinion by the Supreme Court is equivalent to "The matter being ended." (R. 26.) Seemingly appellee has the notion that entry of an interlocutory decree in a Ch. IX proceeding entitles the debtor, as a matter of right to a discharge, to which no creditor may offer objections. Appellee for more than 10 years has disbursed its trust revenues in violation of the mandatory provisions in Sec. 52 (Stats. 1919, p. 667) as construed and applied in *Selby v. Oakdale I. D.*, supra, and *Provident L. C. v. Zumwalt*, supra and which cases are still controlling. All other bond claimants have been paid, although the bonds and coupons owned by appellant, which were duly and regularly presented for payment when due, have been unlawfully dishonored since 1937.

Appellee should assess the land within its boundaries as "escaped property" for the assessment years before 1948-1949 during which prior years the assessor had said property on his rolls but failed to assess the same at a rate sufficient to meet the principal and interest falling due on appellant's bonds, as required by the decisions in *Selby v. Oakdale I. D.*, supra; *Shouse v. Quinley*, supra; *Provident v. Zumwalt*, supra, which cases control the assessment duty of appellee.

The Record shows that beginning in 1933 all land within the District was assessed below the assessment levied in prior years, and the assessment was drastically cut again in 1934 and in all subsequent years. (R. 134, No. 9925; Exhibit "H".)

The refunding of original bonds, except those owned by appellant and one other bondholder was consummated in 1934. No assessment has since been made for the payment of appellant's bonds and interest as required by law, and thus all privately held land has escaped its lawful assessment since 1933.

For, as was said in *Biddle v. Oaks*, 59 Cal. 94, 96, "If any property subject to taxation should escape assessment in any year, the taxation for that year would not be equal and uniform, nor would all property in this State be taxed in proportion to its value, and the behest of the Constitution would not be obeyed * * * The Constitution does not favor the escape of any property from taxation, but positively requires that all property shall be taxed * * * And the exercise of this power (to assess escaped prop-

erty) is directly in accord with the policy and express provisions of the Constitution, which requires all property not exempt from taxation to be taxed. (Const., Art. XIII, sec. 1, *Farmers, etc., Bank v. Board*, 97 Cal. 318, 323.)

Although the Legislature has enacted a statute of limitations for the assessment of escaped personal property (Rev. & Tax Code, Sec. 532) no such limitation is applicable to escaped real property.

Real property within a California Irrigation District is made immune from title by prescription, by Civil Code of Cal., § 1007.

The "composition" offer of 52 cents is considerably less than the money now lawfully due as interest alone upon appellant's bonds, with nothing at all for bond principal.

The decisions controlling the rights and obligation of the parties are:

Fallbrook I. D. v. Bradley, 164 U.S. 112;

Herring v. Modesto I. D., 95 Fed. 705;

Bd. of Sup. v. Thompson, 122 Fed. 860;

Rialto I. D. v. Stowell, 246 Fed. 294;

Bd. of Directors v. Tregea, 88 Cal. 334;

Selby v. Oakdale I. D., *supra*;

Shouse v. Quinley, 3 Cal. (2d) 357;

Meyerfeld v. S. San Joaquin I. D., 3 Cal. (2d) 409;

Provident v. Zumwalt, *supra*;

Moody v. Provident I. D., 12 Cal. (2d) 389.

The final decree, as applied, is at variance with, and, if it stand, will have the force and effect of reversing

the above cases, and a very great many more, which it is submitted are *res adjudicata* and controlling of the point discussed in this proposition.

THIRD PROPOSITION: THE DECREE, AS APPLIED, CONTRAVENES THE LAND LAWS OF CALIFORNIA CONTROLLING THE RENTS, ISSUES AND PROFITS OF LAND WITHIN ITS DOMAIN.

In addition to the conflict discussed in the first two propositions, the final decree, as applied to appellant's claim conflicts with the following federal statutes and code provisions, which under recent and controlling decisions by the Supreme Court of the United States prevent the Courts of Congress issuing any order or decree having the force or effect of "interfering" with the orderly and lawful enforcement of the State's tax laws involving the acquisition, ownership, occupation, transferring and leasing of land within the State's domain, in the absence of complaint that such laws violate a right secured by the United States Constitution, as in *Oyama v. Cal.* case No. 44. (Jan. 19, 1948).

Bankruptcy Act §§ 64 sub. a;

11 U.S.C.A. §§ 104, sub. a;

11 U.S.C.A. §§ 107, subs. b, c;

28 U.S.C. § 41(1) subs. 3, 4;

Bankruptcy Act § 148;

11 U.S.C.A. § 548;

40 U.S.C.A. § 258a;

Rev. St. § 3224;

26 U.S.C.A. § 1543;

11 *Am. Jur., Conflict of Laws*, § 30;
Collier on Bankruptcy, 14th Ed., Vol. 4, page
 157;
 Sec. 17 (*Comp. St.* § 9601 a, sub. (1));
In re Valade Ref. Mfg. Co. v. City of Detroit,
 75 F. Supp. 443 (Mich.);
Skaggs v. Comm., 122 F. (2d) 721. Cert. denied
 315 U.S. 810.

Because the duty imposed on appellee to levy the assessment annually is a fixed and continuing duty created by the Constitution and laws of California until all valid claims, including the claim of appellant is fully paid, with interest, and because such future revenues are the fruits of the trust of land within Paradise Irrigation District, no court order that does not allow appellant, a *cestui que trust*, the full opportunity to receive such trust revenues, when, as and if collected by appellee, can be consistent with the vested statutory rights of appellant, in and to the rents, issues and profits of the restricted land within this district, as that right was construed and applied in *Provident v. Zumwalt* and *Moody v. Provident* cases, *supra*, by the Supreme Court of California.

That appellant is a *cestui que trust*, with a vested interest in and to such public revenues, can not change their character, and render them subject to federal interference. In *In re Spotlight Mfg. Co.*, 75 F. Supp. 458, New York city sales taxes were held immune from bankruptcy interference.

In *Lyford v. State of New York*, 137 F. (2d) 782 (C.C.A. 2) that Court first held that it could, in a

composition proceeding, interfere with future revenue payable as installments for a R. R. grade crossing. This ruling was reversed after rehearing and announced in 140 F. (2d) 840 as follows:

“Since the installments remain continuing obligations of this (R. R.) debtor and any successor in title, as they become due, no plan of reorganization can be feasible and hence acceptable which does not arrange for their payment and thus in substantial effect safeguard the ultimate interests of the State.”

Certiorari was denied in *Bankers Tr. Co. v. N. Y.*, 323 U.S. 714.

All the land within Paradise Irrigation District, together with its rents, issues and profits, is irrevocably dedicated a public trust, until all lawful obligations, including the bonds owned by appellant have been fully paid, with interest, according to the controlling State laws.

FOURTH PROPOSITION: THE DECREE, AS APPLIED, IMPAIRS VESTED RIGHTS OF APPELLANT IN VIOLATION OF THE 5TH AMENDMENT TO U. S. CONSTITUTION.

The substantive rights of appellant are not questioned. They have been clearly and unequivocally construed and confirmed in the cases cited above. The final decree is bottomed on a federal statute (Chap. IX, Bkty. Act). If allowed, it not only breaks the contract owned by appellant, but conflicts with controlling decisions of both the State and U. S. Supreme Courts. In *Louisville Jt. Stock Land Bank v. Rad-*

ford, 55 S. Ct. 854 it was held that the bankruptcy power of Congress is subject to the Fifth Amendment.

In California the controlling purpose of the Irrigation District law is to borrow money, to finance the cost of soil and water conservation systems. All the land within each district is dedicated a public trust. Such dedication ranks higher in dignity and importance than the dedication in Kentucky to secure the mortgages involved in the *Radford* case. The statutory lien for unpaid irrigation district taxes ranks ahead of mortgage liens, whenever created. (*Fallbrook v. Cowan*, 131 F. (2d) 513. Cert. denied.)

The final decree has the force and effect of confiscating appellant's property to pay the taxes of private holders of land and mortgages, and of making squatters into land owners, by federal decree.

It is submitted that such judicial intervention is no more within the powers granted to Courts of Congress, than for a State by simple statute to authorize its Courts to regulate and control private claims to land within the federal domain, contrary to federal law and decisions.

The decree, as applied, also appears to violate Rev. St. § 3224, 26 U.S.C.A. § 1543, as follows: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any Court." The one and only practical effect of the decree, if its stand will be to "restrain the assessment and collection of taxes" which are fixed and mandatory under California law.

Therefore, the final decree, as applied, is objected to because it impairs vested rights of appellant in violation of the Fifth Amendment to the United States Constitution.

FIFTH PROPOSITION: THE DECREE, AS APPLIED TO THE STILL OUTSTANDING ORIGINAL BONDS IMPAIRS A CONTRACT AND TRUST OBLIGATION EXECUTED BY THE STATE OF CALIFORNIA AND SECURED BY ART. I, SEC. 10, CL. 1 OF U. S. CONSTITUTION, AND BY ART. I, SEC. 16 AND ART. XIII, SEC. 6 OF CALIFORNIA CONSTITUTION.

The claim of appellant consists of a contractual obligation evidenced by bonds and coupons issued in 1917 and 1920 and governed by the laws applicable on those dates. There is no complaint that appellee does not have the power to collect revenue sufficient to pay appellant in full.

Stats. 1939, Ch. 72 which is the statute purporting to consent to Federal jurisdiction, applied retrospectively to previously executed contract obligations made by the State or its agencies, would contravene Art. I, Sec. 10, cl. 1 of the U. S. Constitution, and also Art. I, Sec. 16 and Art. XIII, Sec. 6 of the California Constitution.

Shouse v. Quinley and *Selby v. Oakdale* I. D. supra;

County of Los Angeles v. Rockhold, 3 Cal. (2d) 192.

An attempt by the Arkansas Legislature and Supreme Court to give tax delinquent holders of land more time, after a tax title deed had been executed

was disallowed in *Wood v. Lovett*, 313 U.S. 362, as an impairment of contract in a tax title deed. But, the rights of private holders of tax title deeds rest on a very different base from the rights of persons holding a contract with the State or its agency promising to repay money borrowed. The California Court in *Provident v. Zumwalt*, supra, explains that the holder of a tax title deed must assume payment of assessments to pay the bonds of the district the same as the previous title holder, until they are all fully paid, with interest.

There was nothing in the laws of California, at the time the bonds owned by appellant were issued which allowed any federal intervention and appellant's bonds and coupons are immune from impairment by any Court decree, except upon proof that they suffer from some legal infirmity.

In *Cargile v. N. Y. Tr. Co.*, 67 F. (2d) 585 a proceeding to which the State had waived its immunity and consented to be sued, was disallowed on the ground that the State was the real party in interest, and therefore the jurisdiction of the federal Court must fail.

The final decree, as applied contravenes the principle announced by this Court in the case of *Security 1st Nat. Bank v. Rindge L. & N. Co.*, 85 F. (2d) 557, 561, Cert. denied 299 U. S. 613 that a mortgage holder must be paid, because of the protection guaranteed by the Federal Constitution.

In *Petition of Schwarz*, 61 N.Y.S. (2d) 578, the Supreme Court of N. Y. decreed that: "The admin-

istration of a trust of land is governed by the law of that State only." (Restatement of Conflict of Laws, Sec. 243.)

An attempt by the Province of Alberta to impair the obligation of contract in similar bonds was disallowed as *ultra vires* in *Board of Trustees Lethbridge Northern Irrigation District v. I. O. F.*, 2 L.L.R. 273 (1940). Also in *Reference re Debt Adj. Act 1937*, 1 D.L.R. 1, the Canada Supreme Court and in *Plourde v. Roy*, 1 D.L.R. 426, the Alberta Supreme Court disallowed the statutes as *ultra vires*.

The final decree, as applied to appellant's still outstanding original 6% Paradise Irr. Dist. bonds is an order appellee cannot lawfully obey and it is objected to because it contravenes the provisions of Art. I, Sec. 10, Cl. 1 of the U. S. Constitution, and also of Art. I, Sec. 16 and Art. VIII, Sec. 6 of the California Constitution.

SIXTH PROPOSITION: THE DECREE LIMITING THE TIME WITHIN WHICH TO CLAIM THE FUNDS IN CUSTODIA LEGIS TO 12 MONTHS IS AN ERROR OF LAW.

The administration of the fund *in custodia legis* on account of appellant's claim is governed and controlled by Judicial Code, Sections 851-852, Title 28, which provides no limitation on the time within which appellant's claim may be filed and paid. No authority to impose any time limitation is allowed by 11 USCA 401-403, the base of this case. Objection to this part of the decree was duly presented (R. 5) and supported by brief (R. 7/21). The objection was ignored by

appellee (R. 23). This limitation in the decree should be set aside by this Court, on the grounds that it is unfair to appellant, and that it is an error of law. Appellee has not, and can not justly object to this modification, which is respectfully requested.

SEVENTH PROPOSITION: THE INJUNCTIVE PROVISIONS IN THE FINAL DECREE AS APPLIED, ARE AN ERROR OF LAW, AND A GIFT OF PUBLIC FUNDS PROHIBITED BY ART. IV, SEC. 31 OF THE CALIFORNIA CONSTITUTION.

Objections to the injunctive provisions in the final decree were also duly presented. (R. 6.) Brief and citations in support thereof were also submitted. (R. 12/19.) In addition to conflicting with the statutes, code provisions and citations presented (R. 12/19), the decree as applied contravenes the prohibition in Rev. St. § 3224, 26 USCA §1543, as follows:

“No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.”

The one and only effect of the injunction in the final decree, if it stand, would be to “restrain the assessment and collection of taxes” and therefore conflict with the controlling State law as construed and applied in *Provident v. Zumwalt* and *Moody v. Provident*, *supra*.

An injunction presupposes that the Court has obtained jurisdiction of the property of a bankrupt. No such jurisdiction is permitted under Chap. IX of the Bankruptcy Act. *Spellings v. Dewey*, *supra*. Also

that a decree may be entered enjoining and restraining the bankrupt from certain future conduct. No such jurisdiction is granted under Chap. IX. Nothing in the contract between appellee and the RFC would be infringed by removing the injunction in the final decree. No one has objected to its exclusion, as requested. (R. 6, 12/19.)

The Federal Statute, 28 USCA § 379 expressly prohibits the issuance of any injunction to restrain proceedings in a State Court, except in certain cases based on the Federal Bankruptcy power. Proceedings under Chap. IX of the Bankruptcy Act are not actions *in rem*, and even when the bankruptcy proceeding is a *res* case, an injunction is to be sparingly applied. (*Toucey v. N. Y. Life Ins. Co.*, 314 U. S. 119.)

The funds in possession of the district treasurer have not been covered in any way in this proceeding. Those funds, present and future, are trust funds in and to which appellant, as a *cestui que trust*, has a statutory and continuing interest and vested right. Appellee is a trust of land, a political subdivision of the State of California, and its officers and affairs are fiscal affairs of the State, subject to no federal veto or interference "where that action would contravene the provisions of the Federal Constitution." (*U. S. v. Bekins*, *supra*.)

The only injunction authorized in the Federal Statute forming the base of this proceeding, is for the period before the final decree is entered. Nothing in Chap. IX allows a final decree to include any in-

junctive provisions whatever. The only reference to an injunction in this Federal Statute, is in Section 403(c). Had the Congress intended Chap. IX proceedings to be immune from the inhibitions in 28 USCA § 379, it failed to say so. Therefore, the injunctive provision, as follows "be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever as against the petitioning district or its officers, or against the property situated therein or the owners thereof" (R. 21-32) is without warrant of law, deprives appellant of vested rights secured by the U. S. Constitution, and it conflicts with the controlling State law as construed and applied in *Moody v. Provident*, supra, and with recent U. S. Supreme Court cases, supra.

Because the sole effect of the injunction complained of, if it stand, would be to unlawfully give funds belonging to the State, or its agency, it also contravenes the provisions in Art. IV, Sec. 31 of the California Constitution.

EIGHTH PROPOSITION: THE DECREE WHICH GIVES LONG TERM 4% BONDS TO ONE CREDITOR, BUT DENIES EQUAL TREATMENT TO APPELLANT'S CLAIM IS UNFAIR.

In *Mason v. Paradise I. D.*, 326 U. S. 536, the Court said:

"The fact that the R.F.C. holds the vast majority of all the bonds * * * does not mean that it is entitled to preferred treatment. It is clear that it is not."

Then, the Court said:

“It is, of course possible that 52.521 cents in cash may not be as advantageous an offer as 52.521 cents in new and refunding bonds. But there is no showing that it is not. Hence it is impossible for us to say that, although a difference in treatment was warranted, any discrimination in favor of the R.F.C. was so great as to be unfair.”

The R.F.C. loan to appellee was disbursed under instructions dated December 17, 1934. (R. 87, No. 9925.) Appellee contracted to pay interest at 4% on the amount borrowed from RFC which equalled 52.521% of the face value of the original 6% bonds. This interest has been paid to the RFC. (R. 149, No. 9925.) All interest due the RFC since 1934 has been paid, while the interest lawfully due appellant upon his original 6% bonds since 1934 has been unlawfully withheld, except for two small interest payments in November 1936 and January 1937, on prior matured coupons. (R. 157, No. 9925.) Thus, interest has been paid on the claim of the RFC at 4% per annum, amounting to at least 40% of that claim. This past due interest is denied appellant, even to the equal extent of 4% on 52.521% of the principal, which fact appellee is invited to deny, if incorrect.

The plan of composition which allows the RFC to pocket and retain full interest on its claim, which appellee has paid the RFC in violation of Section 52 of the controlling State law, and also to give the RFC long term refundings bonds, with interest fixed at 4% tax exempt, while disallowing appellant any

interest on his claim during the same years, and denying him the equal privilege of taking the refunding bonds, is clearly a gross case of discrimination not permissible by Chap. IX or any other chapter of the Bankruptcy Act.

As said by Mr. J. Frankfurter, dissenting in this case: "Nor do considerations of policy require that the RFC be given such a two faced character * * * It must be remembered, however, that the mere failure * * * to accept a plan of composition does not prove that its resistance is improperly or unfairly recalcitrant. * * * In establishing these classes, creditors are not properly grouped who, on the face value of the same bonds, get different equivalents, and are, as to the only thing that matters, not bound together by the same ties but separated by antagonistic interests."

The decree, as applied, violates both State and Federal law, including § 83, sub. d. of the Act, 11 USCA § 403, sub. d.

NINTH PROPOSITION: THE DISCHARGE, AS APPLIED CONFLICTS WITH THE DENIAL OF DISCHARGE FROM THE SAME DEBTS, AND WHICH IS RES JUDICATA.

The same plan of composition involved in the instant case, was presented by appellee on January 14, 1936, to the U. S. District Court.

"J. R. Mason appeared and filed an answer setting up the unconstitutionality of the Act and substantially the same defenses that he has set up in this pleading. He also filed a Motion to

Dismiss, and this Court on October 28, 1936, entered a judgment of dismissal which has never been appealed from and is now final, a copy of which judgment of dismissal was admitted in evidence as Respondent's Exhibit No. 4." (R. 86/89, No. 9925.)

The case of *Chicot Co. Dr. Dist. v. Baxter State Bank*, 308 U. S. 371 is controlling, the Court having announced at page 377:

"There can be no doubt that if the question of the constitutionality of the statute (11 USCA 301-304) had actually been raised and decided by the District Court in the proceeding to effect a plan of debt re-adjustment in accordance with the statute, that determination would have been final save as it was open to direct review upon appeal. *Stoll v. Gottlieb*, 305 US 165."

More recently this Court in the case of *Shepherd v. McDonald*, 157 Fed. (2d) 467 ruled squarely that

"* * * denial of a discharge from the debts provable, or failure to apply for it within the statutory time, bars an application in a second proceeding for discharge from the same debts."

Had appellant ignored the first proceeding, there is no question that it could now be effectively pleaded as *res judicata* by appellee, and no second proceeding would have been necessary, under the rule announced in the *Chicot County* case, *supra*. Appellant did not, like the Baxter State Bank, ignore the first proceeding, and he obtained a judgment, which is long since final. (R. 89, No. 9925.)

In *Nashville C. & St. L. RR. Co. v. Walters*, 294 U. S. 405, 415, appears

“* * * a statute valid, when enacted, may become invalid by a change in the conditions to which it is applied.”

It is requested that the judgment of dismissal (R. 89, No. 9925), be given the full faith and credit that it is entitled to according to the law as construed and applied in the *Chicot County* case, *supra*.

SUMMARY.

Paradise Irrigation District is a trust of land within the sovereign domain of California, the rents, issues and profits of which are fixed and controlled by State law and decisions when, as here, no federal right is asserted. The above cited recent cases by the Supreme Court of the U. S. adhere steadfastly to the immunity of such State affairs from federal interference, and are decisive that the Courts of Congress must give this doctrine of immunity full effect. Nothing in 11 USCA 401-403 or in any decision by the U. S. Supreme Court, including the *Bekins* case reverses or even modifies this paramount sovereignty of the States to tax and control the private tenure of land within the domain of the States, and to execute fixed and irrevocable contracts to repay money borrowed by the States or their political subdivisions.

The rent of this trust of land is security for the claim of appellant. The net rent which speculators will be in position to misappropriate will increase, should the final decree, as applied be allowed, because the annual *ad-valorem* land assessments required by law to repay the money invested by appellant, could then be lowered. Instead of promoting the common good, such a decree can only have the economic effect of making the cost of acquiring desirable home, orchard and farm sites even more prohibitive to those now landless.

That this economic consequence has already largely come to pass appears in "A Trip to Paradise", (Editorial page of San Francisco Chronicle, May 16, 1947), which reveals that land prices in Paradise Irrigation District "are soaring, and almond acreage you could have picked up in 1929 for \$50 an acre now costs \$1000 an acre and over."

The late Justice Cardozo in the case of *Morningstar v. Lafayette Hotel Co.* (1914), 211 N. Y. 465, wrote:

"To enforce one's rights when they are violated is never a legal wrong, and may often be a moral duty. It happens in many instances that the violation passes with no effort to redress it—sometimes from praiseworthy forbearance, sometimes from weakness, sometimes from mere inertia. But the law, which creates a right, can certainly not concede that an insistence upon its enforcement is evidence of a wrong."

In *Catholic Order of Foresters v. State of North Dakota*, 67 N. D. 228, 271 N. W. 670, the State Supreme Court observed as follows:

“It follows that the question here is purely and simply one of contract. Whether profit shall be made or loss shall be suffered by either the maker or the holders of these bonds, is wholly immaterial.

The rights and obligations of the parties are defined by the contract in the bond, including, of course, the statute pursuant to which the bonds were issued.”

Wherefore the final decree which contravenes the rights and obligations of the parties ought to be amended so as to protect the claim of appellant, or else set aside and reversed, and this proceeding dismissed upon one or more of the constitutional and statutory grounds above presented.

Dated, San Francisco, California,

April 9, 1948.

Respectfully submitted,

J. R. MASON,

Appellant, Pro se.